

NO. 25878

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JOHN DOE, (A minor born on August 12, 1987),
Petitioner

vs.

BEN H. GADDIS, Judge, Family Court of the Third Circuit,
State of Hawai'i, and STATE OF HAWAI'I,
Respondents

ORIGINAL PROCEEDING

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of Petitioner John Doe's petition for a writ of mandamus directing the Honorable Ben H. Gaddis to resume the waiver of jurisdiction proceeding suspended on October 21, 2002 and to deny the second amended petition for waiver of jurisdiction in In the Interest of John Doe (DOB 8/12/87), FC-J No. 005521, presently pending in the Family Court of the Third Circuit, the papers in support and opposition and the records and files herein, it appears that the State filed the petition to waive jurisdiction on October 21, 2001. The respondent judge conducted a hearing on the petition in August and September 2002. Thereafter, the respondent judge suspended the proceeding because he found that Petitioner was not fit to proceed with the waiver proceeding and because he believed further treatment may help to improve Petitioner's condition and provide the court with more information before rendering a final

decision. Petitioner does not indicate that he sought reconsideration of the decision to suspend the proceeding, and he does not address the standard for issuing a writ of mandamus.

A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. State v. Hamili, 87 Hawai'i 102, 104, 952 P.2d 390, 392 (1998) (citing Straub Clinic & Hospital v. Kochi, 81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996)). Such writs are not meant to supersede the legal discretionary authority of the lower courts, nor are they meant to serve as legal remedies in lieu of normal appellate procedures. Id. Where a court has discretion to act, mandamus clearly will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act. Id.

HRS § 571-22 vests discretion in the family court to determine whether to waive jurisdiction over a minor. State v. Rauch, 94 Hawai'i 315, 323, 18 P.3d 324, 332 (2000). Generally, mandamus is not available to order the lower courts to exercise

discretion in a particular manner where an appeal is available. If the respondent judge grants the State's petition for waiver, Petitioner will have a remedy by way of appeal in accordance with HRS § 571-22.5. Thus, Petitioner is not entitled to a writ of mandamus directing the respondent judge to deny the State's petition.

With regard to Petitioner's contention that the respondent judge has no authority to suspend the waiver proceeding to allow Petitioner to obtain treatment before rendering a final decision on the waiver petition, this court has found that deferring a final decision on a waiver petition to enable a juvenile to participate in a special program may be the proper exercise of the family court's broad discretion. In re Doe, 61 Haw. 561, 565, 606 P.2d 1226, 1328 (1980). The court concluded, however, that the court should closely scrutinize the juvenile's amenability to such treatment and finally act on the petition for waiver or denial of waiver of family court jurisdiction within a reasonable time. Id. Thus, contrary to Petitioner's contention, the family court does have the discretion to postpone waiver proceedings to allow for treatment of a juvenile before a final decision is rendered. The court must monitor the treatment and issue a decision on the State's petition within a reasonable amount of time.

In the instant case, Petitioner was finally placed in a treatment facility in March 2003. The respondent judge has scheduled hearings at ninety day intervals to monitor Petitioner's amenability to treatment. At this time, Petitioner has not shown that the proceeding has been suspended for an unreasonable amount of time. Therefore,

IT IS HEREBY ORDERED that the petition for a writ of mandamus directing the Honorable Judge Ben H. Gaddis to resume the waiver of jurisdiction proceeding suspended on October 21, 2002 and to deny the second amended petition for waiver of jurisdiction is denied.

DATED: Honolulu, Hawai'i, October 24, 2003.

Cindy A.L. Goodness,
Deputy Public Defender,
for petitioner on
the petition

Leslie S.H. Chow,
Deputy Prosecuting Attorney,
for respondent in
opposition